For a discussion of the principles involved in these cases, see NOTES, p. 213.

EQUITY — JURISDICTION — WRIT OF *NE EXEAT* WHERE NO PECUNIARY CLAIM INVOLVED. — On *habeas corpus* proceedings, a mother was awarded the custody of her minor child and ordered to allow the father to have access to the child at a specified place and at stated times. In disobedience of the decree she left the state, taking the child with her. Upon her return, the father applied for a writ of *ne exeat* against her, until she should purge herself of the contempt and should fully respond to any order which the court might make touching the custody of the infant. *Held*, that the writ should be issued. *Palmer* v. *Palmer*, 95 Atl. 241 (N. J.).

For a discussion of the case and the use of this writ, see NOTES, p. 206.

EQUITY — LIMITATION OF ACTION — EFFECT OF DELAY ON PLEDGOR'S RIGHT TO RECLAIM. — The defendant was the pledgee of certain stock certificates which were transferred to his name. The pledgor became insolvent, and subsequently his assignee paid the debt, but did not reclaim the stock, which remained in the defendant's possession for twenty-eight years thereafter. Then the first assignee's successor brought a bill in equity to recover the shares. The defendant's demurrer to the bill was sustained. *Held*, that the decree be affirmed. *Wehrle* v. *Mercantile National Bank*, 221 Mass. 585.

On payment of the debt the defendant became trustee of the stock, for though his beneficial pledge interest was cut off he retained the legal title. *Thomas* v. *Van Meter*, 62 Ill. App. 309; *Merrifield* v. *Baker*, 91 Mass. 29. See JONES, PLEDGES, 2 ed. §§ 151–153, 558. Since the defendant never claimed to hold the certificates adversely to the pledgor's rights, there was, strictly speaking, no termination of the trusteeship. *Haney* v. *Legg*, 129 Ala. 619. See 2 PERRY, TRUSTS, 3 ed. §§ 863–865; 2 STORY, EQUITY JURISPRUDENCE, 13 ed. § 1520 *a*. But such a trusteeship, implied from the preëxisting pledge relationship, contains no idea of permanency, for the substantial right of the beneficiary is that the trust should be ended by a transfer to him of the legal title. See 3 POMEROY, EQUITY JURISPRUDENCE, 2 ed. § 1030. It follows, therefore, that the *cestui* has an immediate equitable claim which he must assert within a reasonable time, whereas an express trust not repudiated by the trustee remains unaffected by the passage of time. *Hendrickson* v. *Hendrickson*, 42 N. J. Eq. 657. See *Riddle* v. *Whitehill*, 135 U. S. 621, 634. Where claims remain so long unasserted as in the principal case, equity, on the ground that the facts have become irremediably blurred, refuses to aid the tardy claimant. *Gilmer* v. *Morris*, 80 Ala. 78; *Waterman* v. *Brown*, 31 Pa. St. 161; *Kare* v. *Burnham*, 206 Pa. St. 330. See 2 STORY, EQUITY JURISPRUDENCE, 13 ed. § 1520 *a*. That time works havoc with facts in human minds is a vital consideration which outweighs the apparent injustice of the refusal in the principal case to order restoration of the shares held in trust.

EVIDENCE — *CORPUS DELICTI* — NECESSITY FOR DIRECT PROOF. — In a trial of two prisoners for murder, the evidence consisted of that given by accomplices and, in respect to one of the accused, of a confession also. The body of the deceased, who had disappeared a year before the arrest of the accused, was unidentified, only a few small bones having been found. *Held*, that there was not proper evidence upon which to convict either of the accused. *Rex* v. *Tshingwayo*, 1915, South African L. J. 86.

The doctrine that the death in trials for homicide must be proven either by inspection of the body or by direct evidence of the killing, may be traced to expressions used by Sir Matthew Hale and Lord Stowell which were not intended to assert a general proposition. See 2 HALE, PLEAS OF THE CROWN, 290. *Evans*

v. *Evans*, 1 Hagg. Cons. 35, 105. See 3 WIGMORE, EVIDENCE, § 2081. However, it is still laid down as an arbitrary rule by many courts. *Hinmarsh's Case*, 2 Leach, 4 ed., 569; *Regina* v. *Hopkins*, 8 C. & P. 591; *Ruloff* v. *People*, 18 N. Y. 179. See STARKIE, EVIDENCE, 9 ed., 758 [862]. Though the rule is defended as a protection of the innocent prisoner, it is submitted that less rigid rules can secure adequate protection. Again, it is difficult to see what principle requires that the fact of crime be established by direct evidence when its agency may be established by circumstantial evidence. *Thomas* v. *Commonwealth*, 14 Ky. L. Rep. 288, 20 S. W. 226. Such an inflexible doctrine puts a premium on cleverness in crime, making a conviction impossible whenever the criminal succeeds in completely destroying the body of his victim unwitnessed. See *United States* v. *Gilbert*, 2 Sumn. 19, 27. Finally, a confession is direct evidence. True, it is often of no great weight when uncorroborated. See CHAMBERLAYNE, BEST, EVIDENCE, §§ 563–577; HEALY, PATHOLOGICAL LYING, 23 and cases 20, 23, 25. If made in court, however, it will alone support a conviction. See 1 GREENLEAF, EVIDENCE, § 216. It would seem, therefore, that an extra-judicial confession, when corroborated, should be able to support a conviction without further proof of the *corpus delicti*. See *State* v. *Lamb*, 28 Mo. 218, 230; 19 HARV. L. REV. 469.

EVIDENCE — DOCUMENTS — FAILURE TO PROVE LOSS OF PRIMARY EVIDENCE — NEGLIGENT LOSS OF ORIGINALS. — The defendant sought to introduce into evidence a copy of a written contract, the original of which he claimed had been mislaid and was therefore unavailable despite diligent search. The trial judge excluded the copy. *Held*, that the exclusion was proper on the ground that the original was negligently lost. *Missouri, Oklahoma, etc. Co.* v. *West*, 151 Pac. 212 (Okl.).

Early cases and writers on evidence believed that the necessity of producing originals to prove documents as such was but an aspect of the general maxim which they regarded as one of the fundamental rules of evidence, that the best evidence procurable in the nature of the case should be presented. See THAYER, PRELIM. TREATISE ON EVIDENCE, 484–497. With this conception they readily decided that the profferer's negligence in rendering a document unavailable could not be made an excuse for violating a maxim supposed to be at the root of the law of evidence. See *Thomas* v. *Thomas*, 2 La. 166, 168. See GILBERT, EVIDENCE, 7 ed., 84; BULLER, NISI PRIUS, 252; 3 BL. COMM., 368; SWIFT, EVIDENCE, 31. In reality, however, the best evidence rule is an outgrowth of the ancient mode of trial by production of documents, which later developed into a rule of oral pleading requiring proffers of writings declared on, and finally emerged as a narrow rule of evidence, that was extended to all written instruments because of its excellent sense. See THAYER, PRELIM. TREATISE ON EVIDENCE, 484–507. Thus the history and nature of the doctrine reveal no basis for the early view that documents cannot be proved as such if negligently lost by the profferer. *Rodgers* v. *Crook*, 97 Ala. 722. Exclusion of secondary evidence should be confined to those cases where originals were rendered unavailable purposely to avoid producing them. *Riggs* v. *Tayloe*, 9 Wheat. (U. S.) 483. See *Blake* v. *Fash*, 44 Ill. 302; *Bagley* v. *Eaton*, 10 Cal. 126, 149; *Breen* v. *Richardson*, 6 Colo. 605, 607.

EVIDENCE — DOCUMENTS — SECONDARY EVIDENCE: NOTICE TO ACCUSED TO PRODUCE PRIVILEGED DOCUMENTS. — In a trial upon a charge of sending obscene literature through the mails, the district attorney was allowed to read before the jury a notice to the defendant to produce certain "decoy letters" sent to the defendant and also a letter written by him in reply thereto, all of